

INFO	LOG-00	EEB-00	AF-00	AID-00	AMAD-00	INL-00	DOEE-00
	PDI-00	DS-00	DHSE-00	EUR-00	OIGO-00	FBIE-00	VCI-00
	H-00	TEDE-00	INR-00	IO-00	LAB-01	L-00	MOFM-00
	MOF-00	VCIE-00	NEA-00	DCP-00	NSAE-00	ISN-00	OIC-00
	NIMA-00	PA-00	GIWI-00	PRS-00	P-00	SCT-00	ISNE-00
	DOHS-00	FMPC-00	SP-00	IRM-00	SSO-00	SS-00	STR-00
	NCTC-00	SCRS-00	DSCC-00	PRM-00	DRL-00	G-00	NFAT-00
	SAS-00	FA-00	SRAP-00	SWCI-00	PESU-00	SRMC-00	/001W

O R 170625Z AUG 09  
 FM AMCONSUL LAHORE  
 TO SECSTATE WASHDC IMMEDIATE 4147  
 INFO CIA WASHDC  
 AMEMBASSY ISLAMABAD  
 AMEMBASSY KABUL  
 AMCONSUL KARACHI  
 AMEMBASSY LONDON  
 AMEMBASSY NEW DELHI  
 NSC WASHINGTON DC  
 AMCONSUL PESHAWAR  
 SECDEF WASHINGTON DC  
 USCENTCOM INTEL CEN MACDILL AFB FL  
 AMCONSUL LAHORE

C O N F I D E N T I A L LAHORE 000167

E.O. 12958: DECL: 8/11/2019  
 TAGS: [PGOV](#) [PHUM](#) [PK](#)  
 SUBJECT: PUNJAB ATTORNEYS CONSIDER SUPREME COURT RULINGS PIECEMEAL  
 AND INCONSISTENT  
 REF: ISLAMABAD 1784

CLASSIFIED BY: Matthew Lowe, Acting Principal Officer, Consulate  
 Lahore, U.S. Department of State.  
 REASON: 1.4 (b), (d)

11. (C) Summary: Punjab attorneys from across the political spectrum criticized Chief Justice Iftikar Chaudhry's July 31 rulings against judges appointed during former President Musharraf's last 18 months in office as political and piecemeal, they said in a series of meetings with Acting Principal Officer. Chaudhry Fawad Hussain, who represents former President Musharraf, warned that the dismissal of so many justices allows the Chief Justice to stack the High Courts with Pakistan Muslim League-Nawaz (PML-N) allies. Ahsan Bhoon, removed from the Lahore High Court as a result of the judgment, complained that the Chief Justice spared other judges who met the criteria for removal, a principle that he termed "pick-and-choose." Nawaz Sharif's attorney, Ashtar Ausaf Ali, described Chaudhry's judgment as politically expedient, but discriminatory. Only former Secretary General of the Lahore High Court Bar Association Rana Asadullah Khan defended the decision as a landmark bulwark against military coups. End Summary.

- - -  
 Former LHC Judge Bemoans Pick-and-Choose Judgment  
 - - -

12. (C) Former Lahore High Court Justice Ahsan Bhoon told Acting Principal Officer (A/PO) August 6 that the Supreme Court's July 31 ruling "applied a principle of pick-and-choose." According to Bhoon, the decision delineated three categories of judges: those appointed under the Provisional Constitutional Order (PCO), during the November 3-December 15, 2007 Emergency, and after December 16, 2007 by then-Chief Justice Dogar. Bhoon fell into the latter category, which entailed immediate removal, according to the Supreme Court's ruling; judges in the first category can remain but face proceedings under Article 209 for violating the requirement of a seven-member bench. Bhoon admitted that his affiliation with the Pakistan People's Party (PPP) likely hurt his case in the "sharif courts." [Note: The term "sharif courts" plays on a pun that involves the meaning of sharif as noble and the fact that Chief Justice Iftikar Chaudhry owes his March 2009 return to Nawaz Sharif. End Note.]

- - -  
Lack of Judges Slow Courts  
- - -

¶3. (C) The immediate impact of the decision will hurt the forward movement of any ongoing trial, Bhoon observed. "Litigants will suffer because everything has stopped," he warned. The decision sacked 34 judges from the Lahore High Court, while 14 face Article 209 proceedings, which resulted in a mere eight currently sitting on the bench in Lahore, he detailed. The dearth of justices has resulted in the temporary closure of the Rawalpindi, Bahawalpur and Multan benches, while the Lahore bench will only hear habeas corpus and bail cases until the Supreme Court confirms new justices, he related. Moreover, Bhoon highlighted, the new justices will require significant on-the-job training before they can take on a full caseload.

- - -  
Iftikar Chaudhry and PML-N Can Stack Courts, Provoke Political Strife  
- - -

¶4. (C) According to Chaudhry Fawad Hussain, who represents former President Musharraf, the dismissal of 105 judges, including many confirmed under President Zardari, provides an opportunity for the Chief Justice to install his and Nawaz Sharif's people. "There is a huge void of vacancies, and this will create a huge imbalance," he cautioned in an August 11 meeting with A/PO. He noted that he had just seen the list of 35 nominated replacements for the Lahore High Court sent by Lahore Chief Justice Khawaja Sharif to Governor Salman Taseer, which exclusively contained Pakistan Muslim League-Nawaz (PML-N) affiliates. He highlighted that Hafiz Abdul Rehman Ansari, a "staunch Jamaat Islami" advocate, appeared on the list.

¶5. (C) Governor Taseer traveled to Islamabad August 11 to consult with President Zardari about an official response to the nominated judges, Fawad Hussain reported. However, the 1999 Al Jihad case shifted the burden of recommendations for justices from the executive branch to the Supreme Court, which means Zardari can do little beyond a formal rubber-stamp confirmation, he explained. But he expected that the attempt by the PML-N to install its allies will provoke a political debate with the PPP government.

- - -  
Iftikar Chaudhry Applies Pick-and-Choose Principle  
- - -

¶6. (C) Iftikar Chaudhry opened himself up for criticism by applying an inconsistent standard to remove justices, the attorneys said. "He has chosen his own people," former Justice Bhoon underlined, and cited people affiliated with the Chief Justice whom he protected, such as the Sindh High Court Chief Justice whom Dogar elevated. "Ultimately this is judicial martial law," Bhoon declared. Ashtar Ausaf Ali, who served as Advocate General in Punjab and represented Nawaz Sharif in his recent acquittal of hijacking, critiqued the "discriminatory" decision because it spared certain judges and saved various ordinances issued during the Musharraf Emergency, thus failing to address the ultimate question of legitimacy.

¶7. (C) Mohammad Ahmad Pansota, who opened his own practice after working in Ausaf Ali's firm, dubbed the decision as "random." "The line has been negatively drawn, and should have been done just after 1999," he advised. Instead, the decision reflects Iftikar Chaudhry's personal preferences. "The text of the judgment makes his anger and vengeance clear," he noted. PML-N Member of the National Assembly (MNA) Chaudhry Naseer Ahmad Bhutta agreed in an August 10 meeting with A/PO that the ruling offered a perilous defense of the constitution. "Pick-and-choose has taken place," he reiterated.

- - -  
Musharraf Not Too Worried  
- - -

¶18. (C) The lack of a clear judgment against Musharraf demonstrated Iftikar Chaudhry's careful approach to politics, the attorneys noted. Pansota called the decision "three-quarters political, but directed at the parties, not just Musharraf." Fawad Hussain acknowledged that the although the Supreme Court issued a notice against the former President, the decision "fell short of what people wanted it to do." However, he continued, the mere notice has opened the floodgates for anti-Musharraf media to try Musharraf in the press, which will increase pressure on Zardari to prosecute. "How far can the PPP resist pressure for a Musharraf trial," he wondered. But Musharraf is "not too worried," Fawad Hussain conveyed.

- - -  
Will The Judgment Protect Democracy?  
- - -

¶19. (C) Ashtar Ausaf Ali recognized that the Supreme Court took on the responsibility of judging the Musharraf regime only after the National Assembly failed. He believed that the judgment relayed "it is not in the domain of any court or judge to give power to successful dictators." The ruling established that "the Constitution reigns supreme and even Parliament cannot make amendments to the Constitution in conflict with the basic structure," he explained.

¶10. (C) Ausaf Ali saw the judgment as a safe ruling by the Chief Justice. "He didn't want to rock the boat," he quipped. He noted that lawyers leader Aitzaz Ahsan called on Chief of Army Staff Pervez Kayani before issuing the decision, and he surmised that Kayani drew a clear line. "Iftikar Chaudhry knows it was a stroke of luck that he came back. He has nothing in his favor except Nawaz Sharif," he related. As a result, he noted, the decision lacks a citation of the portion of Article 199, which stipulates civilian rule over the military. Ch. Fawad Hussani opined that the 1974 Asma Jilani decision established a much stronger bulwark against military dictatorship, but failed to prevent a coup three years later.

¶11. (C) Rana Asadullah Khan, a former Secretary General of the Lahore High Court Bar Association and close confidant of Iftikar Chaudhry, told A/PO August 10 that the decision can help prevent military dictatorships. "This landmark decision redefined the rule of the judiciary and the conduct of judges during a military government," he explained. In its citation of Article 6, the Supreme Court also "showed Parliamentarians realize their duty to initiate proceedings," he noted. Fawad Hussain conceded that the judgment, despite its flaws, "will strengthen democracy." But, Pansota pointed out, "Army generals do not care about court judgments."

- - -  
Comment: Mixed Decision Creates Confusion and Potential Clash  
- - -

¶12. (C) While the July 31 ruling has hampered an already overburdened judiciary by removing such a large number of justices in one gavel stroke, the decision has generated even more political uncertainty. The potential for court-stacking could trigger a clash between the PML-N and PPP, who will feel disenfranchised from the system. Moreover, with the PML-N steering the judiciary and the PPP sitting in the executive, the federal government itself could face political bickering and potential paralysis, as one branch of government counters the other. The judgment may have attempted to reinforce democratic institutions, but in doing so Iftikar Chaudhry has laid the conditions for greater political unrest.